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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-534

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL., APPELLANTS

v.

JACINTA MORENO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLANTS

OPINION BELOW

The opinion of the three-judge district court (J.S. App. A) is reported at 345 F. Supp. 310.

JURISDICTION

The judgment of the three-judge district court (J.S. App. B) was entered on May 26, 1972. A notice of appeal to this Court (J.S. App. C) was filed on June 23, 1972. On August 16, 1972, Mr. Justice Rehnquist extended the time for docketing the appeal to and including October 3, 1972. The jurisdictional

statement was filed on October 2, 1972, and probable jurisdiction was noted on December 4, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1252 and 1253.

QUESTION PRESENTED

Whether the provision of the Food Stamp Act excluding households of unrelated individuals from eligibility thereunder is constitutional.

STATUTE AND REGULATION INVOLVED

Section 3(e) of the Food Stamp Act of 1964, 7 U.S.C. 2012(e), as amended by Section 2(a) of Pub. L. 91–671, 84 Stat. 2048, provides:

> The term "household" shall mean a group of related individuals (including legally adopted children and legally assigned foster children) or non-related individuals over age 60 who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common. The term "household" shall also mean (1) a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption, or (2) an elderly person who meets the requirements of section 2019(h) of this title.

7 C.F.R. 270.2 provides in pertinent part:

> (b) "Affinity" means the relationship which one spouse because of marriage has to the blood relatives of the other. Such a relationship once existing is not destroyed for program purposes by divorce or death of a spouse. * * *

* * * * *

(jj) "Household" means a group of persons, excluding roomers, boarders, and unrelated live-in attendants necessary for medical, housekeeping, or child care reasons, who are not residents of an institution or boarding house, and who are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common: *Provided,* That:

(1) When all persons in the group are under 60 years of age, they are all related to each other; and

(2) When more than one of the persons in the group is under 60 years of age, and one or more other persons in the group is 60 years of age or older, each of the persons under 60 years of age is related to each other or to at least one of the persons who is 60 years of age or older.

It shall also mean (i) a single individual living alone who purchases and prepares food for home consumption, or (ii) an elderly person as defined in this section, and his spouse.

* * * * *

(rr) "Related" means related by blood, affinity, or through a legal relationship sanctioned by State law. Persons shall also be considered related for purposes of the program if they are (1) a man and woman living as man and wife, and accepted as such by the community in which they live, or (2) legally adopted children, legally assigned foster children, or other children under the age of 18, when an adult household member (18 years of age or older) acts in loco parentis to such children.

STATEMENT

Appellees, challenging the constitutionality of the 1971 amendment to Section 3(e) of the Food Stamp Act of 1964, 7 U.S.C. 2012(e), brought this suit for declaratory and injunctive relief in the United States District Court for the District of Columbia.[1] The 1971 amendment, added by Section 2(a) of Pub. L. 91–671, 84 Stat. 2048, restricts eligibility for participation in the food stamp program administered under the Act to households consisting only of "related individuals."[2] Appellees alleged that they satisfied all other eligibility requirements of the Act and that their applications for food stamps were denied solely because their respective households included an individual or individuals to whom they were not related. A three-judge district court was convened pursuant to 28 U.S.C. 2282 and 2284. Upon cross-motions for summary judgment, the court declared Section 3(e), as amended, to be invalid under the Due Process Clause of the Fifth Amendment and enjoined the government from denying food stamp eligibility on the basis of the 1971 amendment.

The food stamp program established by the Act is administered by the Department of Agriculture in cooperation with the states. Eligibility for participation in the program is determined on a household rather

[1] Appellees also contended that the implementing regulation of the Secretary of Agriculture, 7 C.F.R. 270.2(jj), conflicted with the statute as amended. The court below rejected this contention.

[2] Individuals over 60 years of age are exempted from this requirement. See note 3, *infra*.

than individual basis. 7 C.F.R. 271.3(a). An eligible household is issued coupons, or food stamps, in an amount based upon the household's size and composition and designed to cover the cost of providing that household with a nutritionally adequate diet. The household is charged an amount for the food stamps based upon its size and income. The food stamps are used to purchase food at retail stores, and the federal government redeems the food stamps at face value, thereby paying the difference between the actual cost of the food and the amount paid by the household for the stamps. See 7 U.S.C. 2013(a), 2016, and 2025(a).

Section 3(e) of the Act, as amended, defines "household" for eligibility purposes as "a group of related individuals * * * or non-related individuals over age 60 who * * * are living as one economic unit * * * [or] a single individual living alone * * *." Prior to its amendment in 1971, Section 3(e) had included within the definition of eligible "household" a "group of related or non-related individuals * * *." Thus the principal effect of the 1971 amendment was the exclusion of groups of non-related individuals under 60 years of age from eligibility under the Act.[3] Each of the appellees claims to live in a household which is ineligible to

[3] An implementing regulation of the Secretary of Agriculture construes the phrase "group of related individuals" as requiring that all individuals in the group, other than roomers, boarders, and live-in attendants, be "related to each other." 7 C.F.R. 270.2 (jj). The district court viewed this construction as being "well within the bounds of the legislative plan" (J.S. App. A, 7). The regulation further provides that if a household contains more than one person under 60 years of age and at least one person over 60, "each of the persons under 60 years of age [must be] related to each

receive food stamps, solely by virtue of the 1971 amendment, due to the fact that it consists of a group of non-related individuals under 60 years of age.[4]

Upon cross-motions for summary judgment, the district court held that the 1971 amendment to Section 3(e) unreasonably discriminates against persons living in groups containing non-related individuals, in violation of the Due Process Clause of the Fifth Amendment. The court ruled that the challenged classification was not relevant to the Act's stated purposes of improving the agricultural economy and alleviating hunger (see 7 U.S.C. 2011), and it was unable to perceive a reasonable legislative basis for the classification.[5] Its judgment enjoins the government

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other or to at least one of the persons who is 60 years of age or older." 7 C.F.R. 270.2(jj) (2). Persons are "related" for purposes of the Act if they are "related by blood, affinity [*i.e.*, through one's spouse], or through a legal relationship sanctioned by State law." 7 C.F.R. 270.2(rr) and (b). In addition, persons are related "if they are (1) a man and woman living as man and wife, and accepted as such by the community in which they live, or (2) legally adopted children, legally assigned foster children, or other children under the age of 18, when an adult household member (18 years of age or older) acts in loco parentis to such children." 7 C.F.R. 270.2(rr).

[4] Some of the appellees represent family households which include only one individual not related to the members of the family—in one case a 56-year old diabetic, in another case the 20-year old daughter of a next-door neighbor—for whom the family provides care or support. See J.S. App. A, 13–14, n. 4. However, if such non-related individuals are roomers or boarders, they do not affect the eligibility of their respective households. See note 3, *supra*.

[5] The only possible legislative purpose fully discussed by the court was that of discouraging immorality. The court stated that the 1971 amendment was over-inclusive in terms of that hypothetical purpose and that such a purpose would itself be constitutionally doubtful, citing *Griswold* v. *Connecticut*, 381 U.S. 479, *Stanley* v. *Georgia*, 394 U.S. 557, and *Eisenstadt* v. *Baird*, 405 U.S. 438.

from denying food stamp eligibility to appellees and "all other persons otherwise eligible, by reason of the fact that they live in households which contain one or more unrelated individuals" (J.S. App. B, 25).

SUMMARY OF ARGUMENT

In amending the Food Stamp Act in 1971, Congress excluded households of unrelated persons from eligibility to participate in the food stamp program. This classification of public welfare beneficiaries must be sustained if it has a reasonable basis. *Dandridge* v. *Williams,* 397 U.S. 471. In reviewing the validity of such a classification, a court must explore all possible legislative purposes. Congress had a reasonable basis for the exclusions from the program it adopted in 1971, and those exclusions are constitutional.

Congress could assume that traditional living units—families and persons living alone—contain the largest numbers of individuals with the greatest need for food stamp assistance. Moreover, the exclusion of other households from the program furthered legitimate governmental interests in efficient administration and elimination of abuses. Concern existed over abuses of the program by the voluntary poor and by persons receiving, or in a position to receive, financial assistance from relatives living elsewhere. The potential for such abuse is greater in households of unrelated persons, and the relative fluidity of the living arrangements in such households rendered the detection of abuse, as well as the general administration of the program, more difficult.

In light of these circumstances Congress was entitled to restrict the scope of the food stamp program. The fact that the statutory exclusion might have been more narrowly drawn does not render the classification invalid, for classification need not be made with "mathematical nicety." *Dandridge* v. *Williams, supra,* 397 U.S. at 485.

ARGUMENT

THE PROVISION IN THE FOOD STAMP ACT EXCLUDING HOUSEHOLDS OF UNRELATED INDIVIDUALS FROM ELIGIBILITY THEREUNDER IS CONSTITUTIONAL

A. THIS WELFARE CLASSIFICATION MUST BE UPHELD IF IT HAS A REASONABLE BASIS

As the court below properly noted (J.S. App. A, 17), this case is "appropriate for the application of traditional equal protection analysis." This Court has frequently held that the classification of beneficiaries in a public welfare statute, such as the Food Stamp Act, must be sustained if it has a reasonable basis. *Jefferson* v. *Hackney,* 406 U.S. 535; *Richardson* v. *Belcher,* 404 U.S. 78; *Dandridge* v. *Williams,* 397 U.S. 471. The underlying rationale for "the application of traditional equal protection analysis" to the classifications of beneficiaries in public welfare statutes was explained in *Dandridge* v. *Williams, supra,* 397 U.S. at 487:

> Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure * * *. But the intractable economic, social, and even philosophical problems presented by public welfare assistance pro-

> grams are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration * * *. But the Constitution does not empower this Court to second-guess * * * officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.

Appellees contend (Mot. to Aff. 5–9) that the statutory classification here in question is invalid under the First Amendment without regard to considerations of due process or equal protection. This contention is based on the erroneous assumption that the purpose of the classification is the regulation of morality. See *infra*, pp. 13–18. The impact of the statutory classification on private morality, if any, is purely incidental. Indeed, unmarried couples living together as man and wife may claim food stamps. See 7 C.F.R. 270.2(rr). Thus the statute does not impinge upon the privacy values with which this Court was concerned in *Roe* v. *Wade*, No. 70–18, decided January 22, 1973, *Eisenstadt* v. *Baird*, 405 U.S. 438, and *Griswold* v. *Connecticut*, 381 U.S. 479.

Nor does the statute affect the traditional associational right of organizing for political, social, or economic purposes. Furthermore, the effect of the classification here does not amount to an invasion of whatever right of privacy or association may attend the choice of living arrangements. Cf. *Wyman* v. *James*, 400 U.S. 309, 317–325. Any effect on associational rights is merely incidental to the welfare purpose of the statute. The incidental impact of public welfare

classifications on the general exercise of free choice in living patterns does not raise First Amendment issues as such. See *Dandridge* v. *Williams, supra,* upholding a classification—limiting the total amount a family could receive in welfare payments—indirectly impinging upon the right to have large families. Some discrimination among potential welfare beneficiaries is inevitable in almost any public welfare statute, and the constitutional issue with respect to such discrimination is properly limited to whether it amounts to a denial of due process or of equal protection.

Appellees, relying on *Shapiro* v. *Thompson,* 394 U.S. 618, assert (Mot. To Aff. 16–18) alternatively that because the statutory classification may have some impact upon rights of association and privacy, it therefore may only be justified, on equal protection grounds, by the showing of a compelling state interest. *Shapiro,* however, should not be construed as standing for the bald proposition that any welfare classification having a tangential relationship to the exercise of fundamental rights is subject to strict "compelling state interest" analysis.

In *Shapiro* this Court found that the purpose of the statutory classifications there in question—which denied welfare benefits to otherwise qualified persons who had not resided in the state for a year—was that "of inhibiting migration by needy persons" and held that purpose to be "constitutionally impermissible" (394 U.S. at 629). The right to travel interstate is not only a fundamental personal right; it is a necessary condition for the continued existence of a federal

union. The interest here involved—the right to live with non-relatives—is not of comparable importance. In any event it is not the purpose of the statutory classification here in question directly to inhibit exercise of that right. See *infra*, pp. 13–18.

Many welfare classifications indirectly affect personal rights which could be viewed as fundamental. For example, as indicated above, the classification in *Dandridge* v. *Williams, supra,* could adversely affect the right to have large families, a right which is at least arguably more intimate and fundamental than the general associational interests claimed by appellees. Cf. *Roe* v. *Wade*, No. 70–18, decided January 22, 1973. The broad application of the strict "compelling state interest" test to all statutory classifications which could possibly be construed as touching upon fundamental interests is unwarranted. See *Eisenstadt* v. *Baird*, 405 U.S. 438, 447, invoking the traditional "reasonable basis" test for a statutory distinction between married and unmarried persons.

The primary interest involved in this case is the appellees' interest in receiving food stamps, and although that interest is significant to the appellees, it does not involve a fundamental constitutional right. The proper standard for determining the validity of such a statute is the traditional test of whether the classification of beneficiaries has a reasonable basis. See, *supra*, p. 8.

Under the "reasonable basis" test, a statutory classification " 'will not be set aside if any state of facts reasonably may be conceived to justify it.' " *Dandridge*

v. *Williams, supra,* 397 U.S. at 485. Thus when reviewing equal protection challenges, "courts have attributed to the legislature any reasonably conceivable purpose which would support the constitutionality of the classification." Note, *Developments in the Law—Equal Protection,* 82 Harv. L. Rev. 1065, 1078. See, *e.g., Two Guys from Harrison-Allentown, Inc.* v. *McGinley,* 366 U.S. 582; *McGowan* v. *Maryland,* 366 U.S. 420; *Goesaert* v. *Cleary,* 335 U.S. 464.

Furthermore, "it is, of course, constitutionally irrelevant whether [the] reasoning [sustaining the statute] in fact underlay the legislative decision * * *." *Flemming* v. *Nestor,* 363 U.S. 603, 612. It therefore was the duty of the court below to explore all possible legislative purposes in passing upon the validity of the statute. Its failure to do so was error. "[P]roper judicial restraint and the presumption of constitutionality require that the legislature be given the benefit of any doubt about its purpose." Note, *supra,* 82 Harv. L. Rev. at 1078. Cf. *F. S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 420 (dissenting opinion of Mr. Justice Brandeis). Accordingly, this welfare classification must be upheld if it furthers any reasonable purpose which may be attributed to the legislature. And, as we now show, the restriction of food stamps to households containing only related individuals has a reasonable basis and therefore is constitutional.

B. THE EXCLUSION OF HOUSEHOLDS OF UNRELATED INDIVIDUALS FROM ELIGIBILITY UNDER THE ACT HAS A REASONABLE BASIS

The underlying purpose of the food stamp program is that of raising the "levels of nutrition among low-income households." 7 U.S.C. 2011. But in carrying out that purpose Congress is not required to solve all the problems of hunger and malnutrition overnight or to satisfy, simultaneously and identically, the needs of low-income households of every description and composition. As this Court has noted, "[a] legislature may address a problem 'one step at a time,' or even 'select one phase of one field and apply a remedy there, neglecting the others.'" *Jefferson* v. *Hackney*, 406 U.S. 535, 546.

Faced as it is with the familiar and inescapable problem of allocating scarce federal resources, Congress is entitled, at this stage in its experience with the food stamp program, to provide for less than all of those in need. The determination of the scope of a welfare program falls within the discretion of Congress; this Court does not sit "to second-guess * * * officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge* v. *Williams*, 397 U.S. 471, 487.

In amending the Food Stamp Act in 1971 to limit its coverage, Congress in effect acknowledged that it was unwilling at that time to provide more than a partial solution to the problems of hunger and mal-

nutrition. However, in so defining the current scope of the food stamp program, Congress could reasonably assume that traditional living units—families* and persons living alone—contain the largest numbers of individuals with the greatest need for assistance. In meeting the nutritional needs of most needy persons, Congress was not required to ensure that its program embraced all potential recipients, for as this Court has observed, Congress need not "choose between attacking every aspect of a problem or not attacking the problem at all." *Dandridge* v. *Williams, supra,* 397 U.S. at 487.

Prior to 1971, needy households were eligible for food stamps without regard to whether their members were related to one another. But there is no constitutional significance in the fact that some of the households excluded from eligibility by the 1971 amendment previously had been entitled to food stamps. See *Richardson* v. *Belcher,* 404 U.S. 78, upholding a newly enacted offset against the federal disability benefits paid to persons also receiving state workmen's compensation benefits. The question is whether Congress in 1971, had a reasonable basis for excluding certain households from the program, and in deciding that issue it is irrelevant that Congress previously had included them.

The inclusion of household groups of unrelated persons within the food stamp program posed two interrelated difficulties. First, the program was subject

* Families with unrelated roomers or boarders remain eligible to receive food stamps. See note 3, *supra.* Thus the groups excluded from coverage under the statute are all less traditional, non-family units.

to the abuses by such households discussed below. See, *e.g.*, 116 Cong. Rec. 41998, 42003. Second, the relative instability of such households complicated the task of administration, particularly the detection of abuse. The 1971 amendment was enacted to deal with these problems. The amendment was conceived during the closing days of the Ninety-first Congress (see H. Rep. 71–1793, 91st Cong., 2d Sess., p. 8) and may well have been viewed as a temporary stopgap pending further congressional review of the proper balance to be struck between the recognized needs of the poor and the legitimate governmental interests in efficient administration and elimination of abuses. In any event, the striking of that balance is a matter peculiarly within the competence of the legislative branch.

The food stamp program was subject to abuse in two ways by households of unrelated persons. There was first the problem of those who chose to remain voluntarily poor, adapting their life-style to the availability of food stamps. As Congressman Foley noted, "concern [had been] expressed about utilization of the program by groups of college students enrolled in fraternities or other collections of essentially unrelated individuals who voluntarily chose to cohabit and live off food stamps." 116 Cong. Rec. 42003.

Congressional concern over this kind of program abuse is partially reflected in the requirement that able-bodied persons between the ages of 18 and 65 (with some exceptions) register for and be prepared to accept work as a mandatory precondition to the eligibility of their respective households. 7 U.S.C. 2014 (c). But Congress could further consider that household-groups of unrelated individuals more frequently

contain individuals who abuse the program by remaining voluntarily poor. The legislative history of the 1971 amendment to Section 3(e) reflects that congressional understanding. See H. Rep. No. 91–1793, 91st Cong., 2d Sess., p. 8; 116 Cong. Rec. 44431, 44439.

A second form of abuse was the participation in the food stamp program by persons actually being provided ample financial assistance by relatives who themselves lived elsewhere; such persons would not be voluntarily poor, or even poor at all, but nevertheless might obtain food stamps by not revealing available sources of support.[7] Households consisting of unrelated individuals by definition contain a larger number of persons whose closest relatives live elsewhere; such persons frequently may have available sources of support not reflected in statements of household income. Congress was entitled to restrict the program in order to avoid the possibility of abuse in such households.

Moreover, unlike families and single individuals living alone, households of unrelated persons more typically represent fluid living arrangements having little stability over time. Yet administration of the food stamp program requires certification of household eligibility on a continuing basis with respect to such matters as household size, income, and available

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[7] Congressional concern over the problem of outside support is further reflected in 7 U.S.C. 2014(b), which denies coverage to households containing an adult who is the dependent, for federal income tax purposes, of a person living in another household which is itself ineligible for food stamps. See our jurisdictional statement in *United States Department of Agriculture* v. *Murry*, No. 72–848.

assets, the compliance by its members with the Act's work requirement, and other factors bearing on the household's entitlement to food stamps. See 7 U.S.C. 2014; 7 C.F.R. 271.3 and 271.4. Thus the process of certification and the detection of abuse are more difficult with respect to households of temporary composition. The classification effected by the 1971 amendment serves to facilitate the administration of the program, for the benefitted classes represent relatively more stable living units with respect to which the problems of eligibility surveillance are somewhat alleviated.

Congress could therefore assume that program abuses were both more frequent and more difficult to detect among households of unrelated persons. This is not to say that appellees' households represent instances of abuse of the food stamp program, although they may constitute less stable living arrangements and therefore present greater administrative problems than do traditional household units. But the fact that the specific abuse against which Congress sought to guard in the statute may not exist in this particular case does not justify invalidating the statute. Congress is free "to legislate generally, unlimited by proof of the existence of the evils in each particular situation." *North American Co.* v. *Securities and Exchange Commission,* 327 U.S. 686, 710–711.

Furthermore, the fact that the statutory exclusion might have been more narrowly drawn does not render the classification invalid. "If the classification has some 'reasonable basis,' it does not offend the Con-

stitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' " *Dandridge* v. *Williams, supra,* 397 U.S. at 485. "Requiring compulsively neat logical correlations between classification and objective would ignore legitimate demands for legislative flexibility." Gunther, *In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection,* 86 Harv. L. Rev. 47–48. The requirements of equal protection do not amount to a "constitutional straitjacket." *Jefferson* v. *Hackney, supra,* 406 U.S. at 546.

In light of these principles, this Court should defer to the congressional judgment that the exclusion of such households at this time from eligibility under the Act is a reasonable and acceptable method of checking and avoiding serious abuses in the food stamp program.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted.

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